

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:14-CR-262 JCM (GWF)

Plaintiff(s),

ORDER

v.

PATRICK LYNN WASHINGTON,

Defendant(s).

Presently before the court are Magistrate Judge Foley's report and recommendation. (Doc. # 72). Defendant Patrick Lynn Washington filed an objection (doc. # 74), and the government filed a response to defendant's objection (doc. # 77).

I. Background

On August 5, 2014, the federal grand jury returned an indictment charging defendant with one count of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). (*See* doc. # 1). On August 8, 2014, defendant made an initial appearance. (*See* doc. # 8). Defendant pled not guilty, and after a detention hearing, he was ordered detained pending trial. (*Id.*)

On September 9, 2014, defendant filed a motion to suppress. (Doc. # 19). The government filed a response on December 4, 2014, (doc. # 60), and defendant filed a reply on December 8, 2014, (doc. # 62). The magistrate judge held an evidentiary hearing on January 21, 2015, regarding defendant's motion to suppress. (Doc. # 68). The magistrate judge issued the instant report and recommendation recommending that the physical evidence against defendant should not be suppressed based on the "inevitable discovery" doctrine. (*See* doc. # 72).

1 **II. Legal Standard**

2 This court “may accept, reject, or modify, in whole or in part, the findings or
3 recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). Where a party timely objects
4 to a magistrate judge’s report and recommendation, then the court is required to “make a de novo
5 determination of those portions of the [report and recommendation] to which objection is made.”
6 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct
7 “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S.
8 140, 149 (1985).

9 **III. Discussion**

10 In the report and recommendation the magistrate judge held that 1) LVMPD officer J.
11 Spurling’s discovery of two firearms inside the stacked tires on the patio of the defendant’s
12 apartment could not be justified under the “protective sweep” exception to the Fourth Amendment;
13 and 2) that nevertheless, the firearms would have inevitably been discovered with the execution of
14 a search warrant based on the other facts set forth in the search warrant application.

15 Defendant objects that the government did not meet its burden at the evidentiary hearing
16 to show by a preponderance of the evidence that the firearms would have been inevitably
17 discovered in this case. Specifically, defendant asserts that without the inclusion of the discovery
18 of the firearms in the search warrant application, “. . . the [search warrant’s] issuing judge likely
19 could have required a stronger showing of probable cause because the warrant affidavit is
20 obviously much weaker without the inclusion of the illegally discovered firearms.” Additionally,
21 defendant asserts that “it is highly unlikely that four cops, including two firearms investigative
22 specialists report to every domestic violence-related 911 call regardless of whether a weapon is
23 discovered by police.” (Doc. # 74, at 4-5).

24 The government concurs with Magistrate Judge Foley’s report and recommendation and
25 asks the court to adopt the report and recommendation.

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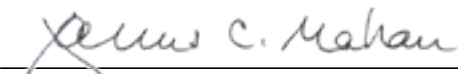
1 The court agrees with Magistrate Judge Foley's thorough analysis of the issues and his
2 conclusions that though the discovery of the firearms was not justified under the protective sweep
3 exception to the Fourth Amendment, it but was justified under the inevitable discovery doctrine.
4 Therefore, after reviewing Magistrate Judge Foley's report, defendant's objections, the
5 government's response, and the underlying briefs de novo, the court adopts the report and
6 recommendation in full.

7 Accordingly,

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Magistrate Judge
9 Foley's report and recommendation (doc. # 72) be, and the same hereby are, ADOPTED in full.

10 IT IS FURTHER ORDERED that defendant Patrick Lynn Williams' motion to suppress
11 (doc. # 19) is DENIED.

12 DATED April 2, 2015.

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16 UNITED STATES DISTRICT JUDGE
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